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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,
Plaintiff,

v.

SERGIO CUIEL, SR.,
Defendant.

CR. NO. 2:05-0113-01 WBS

MEMORANDUM AND ORDER RE: MOTION
FOR RECONSIDERATION OF SENTENCE
REDUCTION

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On November 16, 2016, this court granted defendant's motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 782 to the U.S. Sentencing Guidelines ("U.S.S.G."), reducing defendant's sentence from 240 months to 195 months. (Docket No. 312.) In reducing defendant's sentence, this court noted that the original sentencing judge did not make an explicit finding regarding the drug quantity attributable to defendant, and held that absent such a finding, the court could only consider the amount agreed to by defendant in the plea agreement

1 - "more than 1.5 kilograms" of actual methamphetamine. Based on
2 this quantity and Amendment 782 to the U.S. Sentencing
3 Guidelines, defendant's Guidelines range was reduced, and the
4 court found that a sentencing reduction was appropriate under the
5 particular circumstances of the case. The court ultimately
6 applied a 33% reduction to the low end of the amended Guidelines
7 range in keeping with defendant's original sentence, resulting in
8 defendant's new sentence of 195 months.

9 Now, almost ten months after the court reduced
10 defendant's sentence, the government moves for reconsideration of
11 the sentence reduction in light of the Ninth Circuit's recent
12 decision in United States v. Mercado-Moreno, 869 F.3d 942 (9th
13 Cir. 2017). (Docket No. 317.) Under Mercado-Moreno, which had
14 not been decided at the time defendant moved for reduction of his
15 sentence, "district courts in § 3582(c)(2) proceedings may make
16 additional findings on the drug quantity attributable to a
17 defendant if those findings are necessary to determine the
18 defendant's eligibility for a sentence reduction." 869 F.3d at
19 955. In determining "whether the defendant is more likely than
20 not responsible for the new quantity threshold under the
21 retroactive Guidelines amendment," the court may consider, among
22 other things, the sentencing transcript and portions of the
23 presentence report that the sentencing court adopted, and the
24 court "may accept as true any facts in a PSR that the defendant
25 did not object to at the time of sentencing." Id. at 957.

26 The government seeks to excuse its delay in filing
27 this motion for reconsideration based upon the Ninth Circuit's
28 decision in United States v. Martin, 226 F.3d 1042, 1049 (9th

1 Cir. 2000). However, Martin stands only for the proposition that
2 district courts may reconsider their own orders before they
3 become final based on shifting precedent rather than waiting for
4 the time-consuming and costly process of appeal. However, after
5 the order becomes final, under Federal Rule of Criminal Procedure
6 35(a), the court may only "correct a sentence that resulted from
7 arithmetical, technical, or other clear error" "[w]ithin 14 days
8 after sentencing." This fourteen-day deadline is jurisdictional,
9 "thus divesting the court of the power to amend the sentence
10 after fourteen days." United States v. Aguilar-Reyes, 653 F.3d
11 1053, 1055 (9th Cir. 2011). The court notes that "[w]hile a §
12 3582(c)(2) proceeding is not a plenary or de novo sentencing, it
13 is still a sentencing proceeding" to which Rule 35(a)'s deadline
14 applies. United States v. Phillips, 597 F.3d 1190, 1198-99 (11th
15 Cir. 2010).

16 Thus, at the very latest, the government was required
17 to file any motion to reconsider the court's reduction of
18 defendant's sentence within Rule 35(a)'s fourteen day deadline.
19 In the alternative, the government could have filed a notice of
20 appeal within the normal thirty day deadline under Federal Rule
21 of Criminal Procedure 4(b)(1)(B). The government did neither in
22 this case, despite raising similar arguments in opposition to the
23 Motion to Reduce Sentence that it now raises on the Motion to
24 Reconsider. Accordingly, the court lacks jurisdiction to
25 consider the Motion to Reconsider, and the court will deny the
26 Motion.¹

27 ¹ The court notes that the government's interpretation of
28 the applicable authority would seemingly allow the parties to

1 IT IS THEREFORE ORDERED that the government's Motion
2 for Reconsideration (Docket No. 317) be, and the same hereby is,
3 DENIED.

4 Dated: November 15, 2017



5 WILLIAM B. SHUBB
6 UNITED STATES DISTRICT JUDGE
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25 seek reconsideration of a sentence even years after it is
26 imposed, in light of intervening authority. However, as one
27 court has observed, "[m]otions for reconsideration . . . cannot
28 be brought at simply any time. If they could, criminal
proceedings might never end." United States v. Randall, 666 F.3d
1238, 1242 (10th Cir. 2011).